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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 STEPHEN CHOATE,

8 Plaintiff,

9 v.

10 ROBERT LANE, *et al.*,

11 Defendants.

Case No. 2:17-cv-03043-RFB-VCF

ORDER

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13 This matter comes before the Court on the Ninth Circuit Court of Appeal's Referral Notice.
14 ECF No. 46. The Ninth Circuit refers the matter to the Court for the limited purpose of determining
15 if Plaintiff's *in forma pauperis* status should continue during his appeal or if Plaintiff's appeal is
16 frivolous or is taken in bad faith. Id.

17 "[A]n appeal on a matter of law is frivolous where none of the legal points are arguable on
18 their merits." Neitzke v. Williams, 490 U.S. 319, 325 (1989). Here, the Court dismissed Plaintiff's
19 Complaint on the bases that: (1) the applicable statute of limitations, Nevada Revised Statute
20 11.190(4)(c), barred the claims, (2) equitable tolling, if applicable, could not extend to a date which
21 would overcome the statute of limitations; and (3) no form of applicable relief is available to
22 Plaintiff pursuant to 42 U.S.C. § 1983 against a judge acting within his judicial role. The Court
23 did not allow Plaintiff to amend his Complaint since amendment would be futile. See Sweaney v.
24 Ada Cty., Idaho, 119 F.3d 1385, 1393 (9th Cir. 1997).

25 The applicability of equitable tolling in the instant matter is arguable on its merits, but
26 judicial immunity and the resultant absence of damages, declaratory, or retrospective injunctive
27 relief is not. The only available form of relief against a judge acting within his judicial role in an
28 action pursuant to 42 U.S.C. § 1983 is prospective relief. See Arizona Students' Ass'n v. Arizona

1 Bd. of Regents, 824 F.3d 858, 865 (9th Cir. 2016). It is not arguable that Plaintiff cannot
2 demonstrate a reasonable likelihood that he will again be sentenced by Defendant, Judge Robert
3 Lane, and be uninformed about his right to appeal. The Court therefore finds that the pending
4 appeal is frivolous.

5 **IT IS THEREFORE ORDERED** that Plaintiff's *in forma pauperis* status is REVOKED
6 for purposes of his pending appeal as the appeal is frivolous.

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8 **DATED:** March 8, 2019.



10 **RICHARD F. BOULWARE, II**
11 **UNITED STATES DISTRICT JUDGE**